135-240

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1251. ~~837~~ ~~825~~ 244

ADOLPHUS ECKLOFF, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 23, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1251.

ADOLPHUS ECKLOFF, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

a AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 22d day of October, 1886.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By W. E. WILLIAMS,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 22d day of October, 1886.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 22d day of October, 1886.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By W. E. WILLIAMS,
Assistant Clerk.

1 *Declaration. Filed Sep.* 15, 1883.

In the Supreme Court of the District of Columbia.

ADOLPHUS ECKLOFF
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 24748.

The plaintiff, Adolphus Eckloff, sues the defendant for money payable by the defendant to the plaintiff for that heretofore, to wit, on the 23d day of July, 1866, the board of Metropolitan police commissioners of the Metropolitan police district of the District of Columbia, by virtue of the power and authority in them vested by section three hundred and forty-one of the Revised Statutes of the United States relating to the District of Columbia, and in consider-

ation of the peculiar fitness of the plaintiff to perform the duties of the office or position hereinafter mentioned, and in consideration of the agreement of the plaintiff to faithfully perform the duties of such position until he should be lawfully removed therefrom, appointed the said plaintiff a member of the Metropolitan police force of the District of Columbia, with the rank of lieutenant, to hold such office during such time as he should faithfully observe and execute all the rules and regulations of the said board, the laws of the United States, and the laws or ordinances existing within the District and which applied to any part of the District where plaintiff should be on duty; and the law further provides, as specified in section three hundred and fifty-

five of the said Revised Statutes of the United States relating to
2 the District of Columbia, that no person should be removed from the police force except upon written charges preferred against him to the board of police and after an opportunity shall have been afforded him of being heard in his defence; and thereupon and in consideration of the premises aforesaid the said plaintiff accepted said appointment and office and agreed to perform the duties thereof as aforesaid and properly qualified and entered upon the duties of his office; and thereupon the said plaintiff became obliged and entitled to perform the duties and received from the defendant the pay and emoluments of said office, to wit, the sum of one hundred dollars per month during his continuance therein and until he should resign said office and his resignation should be accepted by said board of police or its successor or until he should be removed from said office, as provided by the hereinbefore-recited law. And afterwards, to wit, on the 11th day of June, 1878, by the seventh section of an act of Congress then passed entitled "An act providing a permanent form of government for the District of Columbia," the said board of police was abolished and the powers and duties exercised by it were transferred to the Commissioners of the District of Columbia, and the plaintiff, in fact, says he has always performed the duties of said office as required by law and that no charges in writing were ever preferred against him to the said board of police, and none ever have been preferred against him to said Commissioners, and he has never been required or allowed an opportunity of responding to any such charges, and he was not removed from said office by said board of police and has not been re-

moved therefrom by said Commissioners of the District of
3 Columbia; but for a long space of time, to wit, from the first day of April, 1883, to the institution of this suit, the said Commissioners of the District of Columbia, contrary to the terms of the appointment of plaintiff and contrary to the contract between the plaintiff and defendant and contrary to their duty and to law, have refused to permit the plaintiff to perform the duties of said office and have refused to allow or pay him the pay and emoluments thereof, to wit, the sum of $100.00 per month, although the said plaintiff has, during all the time last aforesaid, tendered himself ready and willing to perform the duties of said office according to law; and therefore an action hath accrued to the plaintiff to have and demand from the defendant the pay and emoluments of

said office for the time aforesaid, to wit, $100.00 per month for each and every of the months of April, May, June, July, and August, 1883, of, to wit, the sum of $500.00; but the defendant fails and refuses to pay the same, though often demanded, and the plaintiff sues the defendant for the money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant and for work done and materials provided by the plaintiff for the defendant at his request and for money lent by the plaintiff to the defendant and for money paid by the plaintiff for the defendant at his request and for money received by the defendant for the use of the plaintiff and for money found to be due from the defendant to the plaintiff on accounts stated between them; and the plaintiff claims $100.00, with interest thereon from the first day of May, 1883, and $100.00, with interest thereon from the first day of June, 1883, and $100.00, with interest thereon from the first day of July,
4 1883, and $100.00, with interest thereon from the first day of August, 1883, and $100.00, with interest thereon from the first day of September, 1883, according to the particulars of demand herewith filed, besides costs.

C. C. COLE AND A. C. RICHARDS,
Attorneys for the Plaintiff.

The defendant to plead hereto on or before the first special term of the court, occurring 20 days after service hereof; otherwise, judgment.

C. C. COLE AND A. C. RICHARDS,
Attorneys for the Plaintiff.

Particulars of Demand.

The District of Columbia to Adolphus Eckloff, Dr.

To salary as lieutenant of Metropolitan police for the months of April, May, June, July, and August, 1883, at $100.00 per month $500 00

Summons. Issued Sept. 15, 1883.

In the Supreme Court of the District of Columbia, the 15th day of September, 1883.

ADOLPHUS ECKLOFF, Plaintiff,
vs.
THE DISTRICT OF COLUMBIA, Defendant. } At Law. No. 24748.

The President of the United States to the defendant, Greeting:

You are hereby commanded to appear in this court on the first day of its first special term, occurring 20 days after service
5 of this writ on you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk, Attorney.

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

Marshal's Return.

Served copies of the declaration, notice to plead, and this summons on the defendant by service of J. B. Edmonds, com'r, the 17th day of Sept., 1883.

CLAYTON McMICHAEL,
Marshal.

Defendant's Plea. Filed Sep. 18, 1883.

In the Supreme Court of the District of Columbia.

ADOLPHUS ECKLOFF
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 24748.

The District of Columbia, defendant, by A. G. Riddle, its attorney, says it never was indebted as alleged in plaintiff's declaration.

A. G. RIDDLE,
Att'y for D. C.

6 *Joinder of Issue. Filed Oct. 5th,* 1883.

In the Supreme Court of the District of Columbia.

ADOLPHUS ECKLOFF
vs.
DISTRICT OF COLUMBIA. } Law. No. 24748.

OCT. 5, 1883.

The plaintiff joins issue upon the defendant's plea.

C. C. COLE,
A. C. RICHARDS,
Atty's for Pl'ff.

Court Proceedings.

Proceedings before the supreme court of the District of Columbia, holding a special term at law and circuit court in and for said District, and designated by order passed in general term September 25th, A. D. 1885, as division No. 1, commencing on the third Monday, it being the nineteenth day, of October, A. D. 1885.

MONDAY, *October 19th, A. D.* 1885.

By order of Walter S. Cox, one of the justices of said court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

* * * * * * *

FRIDAY, *December 18th, A. D.* 1885.

Session resumed pursuant to adjournment, Cox, justice, presiding.

* * * * * * *

7 ADOLPHUS ECKLOFF, Pl't'ff,
vs.
THE DISTRICT OF COLUMBIA, Def't. } At Law. No. 24748. Cal. 227.

Now comes here as well the plaintiff, by his attorneys, Messrs. Cook, Cole, and Richards, as the defendant, by its attorney, Mr. Riddle, and a jury of good and lawful men of this District, to wit: John T. Mitchell, A. Ross Ray, John W. Shelton, Daniel Smith, James H. Weeden, Charles Dougherty, George A. Birch, Alfred C. Newman, Elisha P. Taylor, Abraham D. Lewis, Austin E. Joyce, and Stephen L. Kearney, who, being duly sworn to try the issues above joined, after the case is given them in charge, on their oath say they find said issues in favor of the plaintiff and that the money payable to him by the defendant is the sum of five hundred dollars, with interest thereon from September 15th, 1883, besides costs. Therefore it is considered that the plaintiff recover against said defendant five hundred dollars, with interest as aforesaid, being the amount payable by it to the plaintiff by reason of the premises and $—— for his costs of suit, and have execution thereof.

Motion for New Trial. Filed Dec. 29, 1885.

In the Supreme Court of the District of Columbia.

ADOLPHUS ECKLOFF
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 14748.

And now comes the defendant, The District of Columbia,
8 and moves the court on its minutes to set aside the verdict rendered in the above-entitled cause and grant the defendant a new trial upon bills of exceptions duly taken to the rulings of the court during the progress of the trial in admitting and excluding evidence and in his instructions to the jury.

A. G. RIDDLE,
Att'y for Def't.

Bills of Exceptions. Filed Jan. 23, 1886.

In the Supreme Court of the District of Columbia.

ADOLPHUS ECKLOFF
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 24748.

Be it remembered that at the trial of this cause before the Hon. Walter S. Cox, an associate justice of the supreme court of the District, and a jury regularly empanneled and sworn to try the issues pending between the plaintiff and defendant, the plaintiff, to maintain and prove the issues upon his part joined, offered and gave evi-

dence to the court and jury tending to show that he became a member of the Metropolitan police force of the District of Columbia on the 11th day of September, 1861, and served continuously thereafter until the 31st day of March, 1883; that he entered the service as a private, was promoted sergeant August 10, 1865, and subsequently, on July 23rd, 1866, appointed a lieutenant, which position he
9 occupied on March 31st, 1883; that prior to the time his service was dispensed with, on March 31st, 1883, he had a conversation with Wm. McE. Dye, who subsequently became major of police; that he was sent for [for] that purpose and notified that said Dye wanted to see him; that said plaintiff went to police headquarters, and said Dye then stated to plaintiff that he had been requested to ask for his resignation, and the plaintiff then and there refused to tender his resignation, and asked said Dye if there were any charges against him, the said plaintiff, and he was informed that there *was* not, and said Dye thereupon stated to plaintiff that he had better tender his resignation, as by so doing he, said plaintiff, would be better off, and said Eckloff then and there, for a second time, refused to tender his resignation, and was requested by said Dye to give him in writing something to show the Commissioners, who were about to go into consultation about the matter; that said plaintiff then proceeded to comply with the request of said Dye; that before he completed the writing of the letter Dye came to him and informed him that he was dismissed, but told him to let him have the letter and he would give it to the Commissioners and would get a reply in writing; that within a few minutes thereafter he was informed by said Dye that he had been dismissed from the police force by the Commissioners of the District; that he thereupon served upon the plaintiff, as he stated he was requested to do by the Commissioners, a notice in words and figures following, the signature of Tindall and his position as secretary to Commissioners being admitted:

L. R. 95, 239. Refer in reply to No. 19233.

OFFICE OF THE COMMISSIONERS,
DISTRICT OF COLUMBIA, WASHINGTON, *March* 31, 1883.

10 Ordered, That the services of Lieutenant Adolphus Eckloff, of the Metropolitan police force, are dispensed with from this date.

Official copy furnished Lt. Adolphus Eckloff.

By order:

WM. TINDALL, *Secretary.*

Official copy.

WM. TINDALL, *Secretary.*

And the plaintiff, further to prove the issues upon his part joined, then offered and read in evidence a letter in words and figures following, being the letter written by said Eckloff at request of said Dye:

WASHINGTON, D. C., *March 31st*, 1883.

Major W. McE. Dye, superintendent Metropolitan police.

SIR: You having just informed me that the honorable Commissioners of the District requested you to ask of me my resignation as a member of the Metropolitan police, I would respectfully state that I have been a member of the Metropolitan police for the past twenty-one years. I was born and raised in this city, having raised a family of ten children. From the fact that I have always performed my duty faithfully to the best of my ability, I trust that the honorable Commissioners will at least give me a hearing in my defense, if any charges are or can be preferred against me. I therefore most respectfully decline to tender my resignation.

Very respectfully,

[SEAL.] (S'g'd) A. ECKLOFF,
Lieutenant.

For endorsement see next sheet.
Official copy.

W. TINDALL, *Secretary.*

11 And the plaintiff, to further prove the issues on his part joined, then gave evidence tending to prove that to said letter he had never received an answer; that prior to said 31st day of March, 1883, he had never heard anything from either the Commissioners of the District or Major Dye about requesting or desiring his resignation; that no charges in writing were preferred against him nor was he served with any notice that written charges had been preferred against him; that he was not put on trial for any charges; that said letter from said Tindall notifying him of his suspension was served on him on Saturday, March 31, 1883, and on the following Monday he went to police headquarters and met Major Dye on the steps to ascertain if there was any answer from the Commissioners to his letter directed to them refusing to resign his office; that the salary of his office was $100 a month; that he went to said headquarters, and to that portion of it, where he has previously performed his duties as lieutenant, in charge of the detective corps, every day for a month after said 31 day of March, 1883, to wit, during the month of April, 1883, and on pay day of police for said month of April he went to the property clerk, who was at that time paymaster, to sign the pay-roll and get his pay, and was told by said paymaster that he was sorry that his, the said plaintiff's, name was not on the pay-roll, and that therefore he could not pay him; that that was all that took place at that time; that since said time and up to September 15, 1883, he has been always ready to perform the duties required of him; that since said month of April, 1883, that there is hardly a day or two but he has been at police headquarters; that he never informed any of the authorities of the District that he was ready to perform the services of said office of lieutenant of police; that the office filled by plain-
12 tiff, after his said removal, was not filled for seven (7) months and on cross-examination of said plaintiff he further testified

that when he met Major Dye on Monday morning, after the letter of suspension was served on him, that he, said plaintiff, stated that he came to get an answer from the letter that he sent to [the] Commissioners, and was informed that it had been left with their secretary; that the plaintiff did not at that time say that he was there to pursue his duties as lieutenant, which he had before March 31st, 1883, been assigned to perform; that during said month of April, 1883, he reported to the clerk in his office; that he went into said office and did nothing, because there was nothing assigned for him to do; that he never at any time, to the Commissioners, or major of police, or any officer at police headquarters, stated that he was ready to go on and discharge the duties of his office; that Major Brock was major of police immediately preceding Major Dye; that prior to his suspension, if he performed any duty, he would report each morning to [the] major of police; that he never did any duty after March 31st, 1883; that [the] Monday following March 31, 1883, he never said anything to any one about doing any duties; that he never [since] said last-mentioned date spoke to Major Dye; that the next officer in charge at police headquarters to the major of police is and was at that time referred to Captain Vernon, to whom the plaintiff never reported to be assigned to duty. And on redirect examination of said plaintiff he further testified that the room that he occupied at police headquarters before his services were dispensed with he had occupied for three (3) years prior to such suspension; that the lieutenants of the different precincts, when making their morning reports, would first come into said room, and when called by a bell from the major's room would go there to
13 report; that prior to [the] 31st of March, 1883, he would go into his room; he would remain there until he was assigned to duty; but all during [the] month of April, 1883, although he was in said room during the forenoon for an hour to an hour and a half every day, he was not assigned to duty; that he did not go into the major's room with the other lieutenants when they were summoned in each morning. And on cross-examination of M. B. Gannon, a witness for plaintiff, he testified that plaintiff came in every morning during [the] month of April, 1883, and sat around for awhile and then went out, but did not take any part in any business, nor did he offer to. And the plaintiff further gave testimony to prove the issues upon his part joined, tending to show that the paymaster to whom the plaintiff *appeared* for leave to sign pay-roll and draw his check for month of April, 1883, left said plaintiff's name off said pay-roll by order of [the] Commissioners of the District, and that the plaintiff never came to said paymaster's office but once for that purpose, and then on said day of April, 1883.

The plaintiff further offered and read in evidence, on his behalf, certain sections of the manual for the government of the police force of the District, to wit, sections five (5), six (6), seven (7), eight (8), thirty-five (35), and section one hundred and eighty-four (184), (which — here insert and make a part hereof) and therefore, the foregoing being all the testimony on behalf of plaintiff, he rested.

Thereupon the defendant, to maintain and prove the issues upon

its part joined, offered and gave testimony tending to prove that the major of police, upon the refusal of the plaintiff to resign, reported the matter to the Commissioners, and thereupon the defendant offered in evidence the following letter, which accompanied the letter of the plaintiff refusing to resign.

14 Respectfully forwarded to the hon. Commissioners with the request that Lieut. Eckloff be discharged from the Metropolitan police force. The position which he held afforded him a bird's-eye view of the situation when so much crime was committed. He was, at least, inefficient, not to detect more of the crime that was lurking under his very nose. I am of the opinion that his surroundings have been such that it would be imprudent to retain him among men who can but be demoralized by his presence.

W. McE. DYE.

I shall give the lieutenant to understand that the Commissioners merely acted upon my recommendation.

[SEAL.] (S'g'd) W. McE. DYE.

Official copy.

W. TINDALL, *Secretary.*

And thereupon the defendant further gave testimony tending to prove that after the 31st of March, 1883, the major of police never regarded the plaintiff as in the police service, and that he never knew of the plaintiff's reporting for duty; that the method of lieutenants rendering service was to make report every morning at nine (9) o'clock; that when said lieutenants came in in the morning they went to the captain and inspector's room, and on ringing of a bell they would go to the major's room; that the cause for dismissing the plaintiff was that he was in charge of the detectives at that time, and was identified with a system that was not liked, and the Commissioners and major of police considered it best for the police force that his services should be dispensed with; that at the time of his, the plaintff's, suspension there was a general investigation of the detective force being carried on, and shortly after the detective force was legislated out of office; that there were

15 charges of collusion between thieves and detectives—the detectives were under plaintiff's immediate supervision, who was detailed as lieutenant of police in charge of them—he should have been cognizant of; that there was no charge against the plaintiff of any collusion with thieves. And on cross-examination the major of police *he* testified that he did not remember of the plaintiff expressing a wish or desire to be relieved of duty of charge of detectives and to be put on other duty, nor did the major know that he expressed such a wish to the Commissioners; that if the plaintiff had come to him on Monday morning, after his suspension, and offered to go on duty he would not have permitted him.

And thereupon, the foregoing being all the testimony in behalf of defendant, it rested. Thereupon the plaintiff in rebuttal, further to prove the issues upon his part joined, gave testimony tending to

prove that he was in charge of the detectives three (3) years; that when he was assigned to such duty he went to the Commissioners and major of police and requested to be permitted to remain at the police court, where he had been assigned to collect fines for the District; that they refused to accede to his request, and that he time and time after that requested the major of police to relieve him from such duties in charge of the detectives, but was refused. And thereupon, the foregoing testimony being all the testimony offered on behalf of the plaintiff and defendant, respectively, the plaintiff rested, and the testimony on both sides was closed. Thereupon the defendant, by its attorney, requested—to instruct the jury that upon the whole evidence in the case, as set out, the plaintiff
16 was not entitled to recover, but the justice presiding refused to grant said instructions as prayed, and ruled that the plaintiff could not under the law be suspended or discharged from service of the police force of the District of Columbia without trial on written charges and an opportunity to be heard in his defence, and further ruled that under the evidence the plaintiff was entitled to recover salary from the 31st day of March up to the 1st day of September, 1883; to which refusal of the court to so instruct and its rulings the defendant duly excepted, and the exception was noted by the court on its minutes before the jury retired to consider of their verdict, and the defendant, by its attorney, requests the court presiding to sign, seal, enroll, and make a part of the record the defendant's first bill of exceptions, according to the form of the statute in such case made and provided, and it is accordingly done now for then this the 23d day of January, A. D. 1886.

W. S. COX. [SEAL.]

After the signing, sealing, enrolling, and making a part of the record the defendant's first bill of exceptions, which is made a part hereof, the defendant further requested the court to instruct the jury as follows:

2. The court is further requested to instruct the jury that, inasmuch as the compensation of the plaintiff was payable monthly, it was his duty, in order to entitle him to recover, that he should have tendered himself each month.

3. The court is requested to instruct the jury that under the evidence the plaintiff, if he is entitled to anything, is only entitled to one month's pay.

4. The court is requested to instruct the jury that the plaintiff is not entitled to recover if the jury believe that he did not perform any service after the 31st of March, 1883.

17 5. The court is requested to instruct the jury that the evidence offered by the plaintiff is not a sufficient tender of readiness to perform the services which he had before the thirty-first day of March, 1883, been accustomed to perform.

But the justice presiding refused to grant each of said instructions as prayed. To the refusal of the court to grant each of said instructions the defendant severally and separately excepted, and the several exceptions were severally and separately noted by the court on

its minutes before the jury retired to consider of their verdict, which was for the plaintiff in the sum of $500, and the defendant, by its attorney, requested the justice presiding to sign, seal, enroll, and make a part of the record the defendant's second bill of exceptions, according to the form of the statute in such case made and provided, and it is accordingly done, now for then, this the 23d day of January.

W. S. COX, *J.* [SEAL.]

Proceedings in General Term.

MONDAY, *January* 25, 1886.

Proceedings before the supreme court of the District of Columbia, in general term, commencing the fourth Monday, 25th day of January, 1886.

Present: Justices Hagner, Cox, James, and Merrick.

* * * * * * *

MONDAY, *April 19th*, 1886.

Session resumed pursuant to adjournment.

Present: Chief Justice Cartter and Justices James and Merrick.

18 ADOLPHUS ECKLOFF, Plaintiff, } At Law.
vs.
THE DISTRICT OF COLUMBIA, Defendant. } No. 24748. Cal. 76.

This cause having been argued by counsel on both sides and submitted to the court upon the record of the special term because it thereupon appears to the court here that the judgment of the special term is erroneous, it is considered that said judgment be, and it is hereby, reversed, and that the defendant go without day and recover against the plaintiff the costs of the cause, to be taxed by the clerk, and have execution thereof.

19 In the Supreme Court of the District of Columbia, the 27th day of September, 1886.

ADOLPHUS ECKLOFF
vs.
DISTRICT OF COLUMBIA. } At Law. No. 24748.

In error.

Know all men by these presents that we, Adolphus Eckloff and Almarin C. Richards, are bound unto the above-named defendant in the sum of five hundred dollars, to be paid to the said defendant and its successor or successors; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 27th day of September, 1886.

Whereas the above-named — has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment ren-

dered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Adolphus Eckloff shall prosecute his said writ to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ADOLPHUS ECKLOFF. [SEAL.]
A. C. RICHARDS. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved this 28th day of Sept., A. D. 1886.

D. K. CARTTER,
Chief Justice.

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is in the said court before you between Adolphus Eckloff and The District of Columbia, being No. 24748, at law, a manifest error hath happened, to the great damage of the said Adolphus Eckloff, as by his complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 1st day of October, in the year of our Lord, 1886, and of the Independence of the United States the one hundred and eleventh.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To The District of Columbia:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Adolphus Eckloff is plaintiff and you are de-

fendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
Ch'f Just.

I accept legal service of this citation this 1st day of October, 1886.

H. E. DAVIS,
Ass't Att'y, D. C.

Endorsed on cover: District of Columbia supreme court. No. 1251. Adolphus Eckloff, plaintiff in error, *vs.* The District of Columbia. Filed October 23, 1886.

Supreme Court, U. S.
FILED,
MAR 27 1890
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1889.

ADOLPHUS ECKLOFF, *Plaintiff in Error*,
vs.
THE DISTRICT OF COLUMBIA. } No. 244.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief of Counsel for Plaintiff in Error.

C. C. COLE,
W. L. COLE,
ATTORNEYS FOR PLAINTIFFS.

Law Reporter Print, 503 E.

Supreme Court of the United States.

OCTOBER TERM, 1889.

ADOLPHUS ECKLOFF, *Plaintiff in Error*,
vs.
THE DISTRICT OF COLUMBIA. } No. 244.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief of Counsel for Plaintiff in Error.

Statement of the Case.

The plaintiff in error brought his action against the District of Columbia in the Supreme Court of said District to recover the salary claimed to be due him as a lieutenant of the Metropolitan Police of the District of Columbia, for the months of April, May, June, July and August, of the year 1883, at $100 per month.

At the trial of the case at Special Term the plaintiff proved that he was appointed a member of the Metropolitan Police force of said District on the 11th day of September, 1861, and served continuously thereafter until the 31st day of March, 1883. That he entered the service as a private, was promoted sergeant August 10, 1865, and lieutenant July 23, 1866, in which position he continued

until March 31, 1883. That on the 31st day of March, 1883, he was notified of his dismissal from his office aforesaid, and from that date his services were dispensed with. That no written charges were preferred against him. That no notice was given him of any charges preferred against him, and that no opportunity was afforded him of being heard in his defence. That prior to the 31st day of March, 1883, his resignation had never been requested, and that he did not know it was desired by said Commissioners. That on the day following, to wit, April 1, 1883, and every day for a month thereafter, he went to Police Headquarters every morning as he had been accustomed to do before he was notified of his removal from office, but was not assigned to any duty, and at the end of the month, it being the pay-day of the police for said month, he applied to the proper officer for his pay for said month, but was refused. That he had been ready and willing at all times since notified of his dismissal from said office to perform the duties thereof, but had not been permitted to do so. That the salary of said office was $100 per month.

The justice of said court holding said special term instructed the jury that the plaintiff could not, under the law, be suspended or discharged from service on the police force without trial on written charges and an opportunity to be heard in his defence, and that the plaintiff was entitled to recover salary from the 31st day of March, 1883, to the 1st of September, 1883, according to the particulars of demand of his declaration, and the plaintiff had a verdict and judgment accordingly.

This judgment was reversed by the Court in General Term, and the case dismissed at the plaintiff's cost. To reverse that judgment this writ of error is prosecuted.*

*** No opinion was filed with the record, but subsequently the opinion was published in 4th Mackey's Reports, page 512, and is printed as an Appendix to this brief.**

The provisions of law in relation to the police force of the District of Columbia may be found in the Revised Statutes relating to the District of Columbia, chapter 13, page 38 and following. The original act, to which but few amendments have been made, was passed August 6, 1861, and is found in 12 Statutes at Large, chapter 62.

By this act the District of Columbia was constituted a police district to be called "The Metropolitan Police District of the District of Columbia."

The exclusive control of all matters pertaining to the police force was vested in the Board of Police for said District, which consisted of five Commissioners to be appointed by the President of the United States, and the Governor of the District was to be *ex officio* a member of the board.

The police force was to consist of a major, a captain, 10 lieutenants, 20 sergeants, 6 detectives, and privates not exceeding 200.

The other provisions of the act material to the controversy in this case are as follows—the references being to the sections as contained in the Revised Statutes relating to the District of Columbia—

SEC. 337. "The Board of Police is authorized to pass, from time to time, rules and regulations for the proper government and discipline of its subordinate officers, and the duties of the police force shall be executed in accordance therewith."

SEC. 341. "The officers of the police force shall be severally appointed by the Board of Police, and each person so appointed shall hold office only during such time as he shall faithfully observe and execute all the rules and regulations of the board, the laws of the United States, and the laws or ordinances existing within the District, and which apply to any part of the District, where the members of that force may be on duty."

SEC. 342. "The qualifications, enumeration, and distribution of duties, mode of trial, and removal from office, of each officer of the police force, shall be particularly defined

and prescribed by rules and regulations of the Board of Police, in accordance with the Constitution and laws of the United States applicable thereto."

Sec. 354. "No person shall be appointed to office, or hold office in the police force, who cannot read and write the English language, or who is not a citizen of the United States, or who shall have been indicted and convicted of crime; and no person shall be appointed as policeman or watchman who has not served in the Army or Navy of the United States and received an honorable discharge."

Sec. 355. "No person shall be removed from the Police force, except upon written charges preferred against him to the Board of Police, and after an opportunity shall have been afforded him of being heard in his defence; and no person removed from the police force for cause shall be re-appointed to any office in said force."

An Act of Congress passed June 20, 1874, 18 Statutes at Large, page 116, repealed all provisions of law providing for an executive and legislative assembly for the District of Columbia, and devolved the government of said District upon a Commission to consist of three persons, to be appointed by the President of the United States, but the Commissioners were given no jurisdiction of the Metropolitan Police force. It continued under the exclusive jurisdiction of the Board of Police which, after this act, consisted of the five Commissioners appointed by the President.

This act of June 20, 1874, was intended only for a temporary provision for the government of the District, for by the fifth section of the act a select committee, to consist of two Senators and two Members of the House, was authorized to prepare a suitable frame of government for the District of Columbia, and report appropriate draughts of statutes for carrying the same into effect.

On the 11th day of June, 1878, Congress passed an act providing a permanent form of government for the District of Columbia (20 Statutes at Large, page 102), which authorized the appointment by the President of two persons, who,

with an officer of the Engineer Corps, to be named by the President, are designated the Commissioners of the District of Columbia, who are authorized to exercise all the powers and authority which was vested in the Commissioners under and by virtue of the Act of 1874; and all laws then in force in said District, not inconsistent with the provisions of said act were expressly continued in full force.

In the third section of the Act of 1878, defining the powers of the Commissioners, it is enacted "and said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office *under them** authorized by law."

Section. 6 of the Act of 1878 enacts as follows:

"That from and after the 1st day of July, 1878, the Board of Metropolitan Police, and the Board of School Trustees shall be abolished; and all the powers and duties now exercised by them shall be transferred to the said Commissioners of the District of Columbia."

The Board of Police, pursuant to the provisions of law above quoted, made rules and regulations for the government and discipline of the police force at an early day, which are compiled into a printed book called "Manual of the Metropolitan Police," and the following sections thereof were given in evidence at the trial of this case.

SEC. 5. "Applications for appointment shall be in writing, entirely written and signed by the party applying, and according to the rules and regulation of the Board. Charges preferred against any member of the Police Force must be in writing and sworn to or affirmed. But this shall not apply to complaints or charges by any Commissioner or member of the Board, the major, captain, or any lieutenant,

***This quotation is from the Act of 1874 as amended by the Act of 1878, the amendment being the insertion of the words "under them."**

who may charge simply in writing. All charges must be filed with the secretary."

SEC. 6. "When charges are filed, the Secretary shall, without delay, notify the party, who may send answers to the Secretary."

SEC. 7. "The charges may be voted frivolous by a majority of the Board, without any examination of evidence or trial."

SEC. 8. "The sentences of the Board, upon charges proved, will be in writing, duly entered in minutes, copied into the records of the Department, and a duplicate read to the force of the precinct to which the sentenced member belongs, and the same served upon him."

SEC. 35. "Each person permanently appointed upon the Police Force shall hold his office only during such time as he shall faithfully observe and execute all the rules and regulations of the Board of Police, the laws of the United States, and the laws and ordinances existing within the District."

SEC. 184. "The trial of a police officer, permanently appointed, when charges have been preferred, shall be by testimony on oath, against and for the accused, and reducing the substance thereof to writing. The same may be taken by or before one or more of the Police Commissioners. The testimony thus reduced to writing shall be reported to the Board of Police Commisssioners with the opinion thereon of the commissioner or commissioners before whom the same was taken, for the action and decision of the Board."

The General Term held that the act of 1878 was an organic act, and therefore repealed the sections of the Revised Statutes in question, in relation to the police force, although there may be nothing in the act repugnant thereto.

Assignment of Error.

1. The Court below erred in reversing the judgment of the Court at Special Term and dismissing the plaintiff's suit.

2. The Court erred in not affirming the judgment of the Special Term.

3. The Court erred in holding that the act of June 11, 1878, is an organic act.

4. The Court erred in holding that section 355 of the Revised Statutes of the United States relating to the District of Columbia was repealed by the act of June 11, 1878.

5. The Court erred in holding that there need be no repugnancy between said section 355 of the Revised Statutes, and said act of 1878, in order to work a repeal by implication of the former by the latter.

6. The Court erred in holding that the Commissioners of the District of Columbia had power to remove the plaintiff from the police force without cause and without a trial, after notice to him of charges regularly preferred in writing.

Brief of Argument.

Jurisdiction.

The question presented by the Record is as to the authority of the Commissioners of the District of Columbia to remove the plaintiff from office in a summary way without charges preferred, without notice, and without an opportunity afforded him to be heard in his defence, as required by the act of Congress under which the Metropolitan Police force was created.

The Commissioners claiming to be vested with such authority attempted to remove plaintiff without charges,

notice, or opportunity given him to be heard. The Court in General Term upheld the authority so exercised by the Commissioners.

Jurisdiction is conferred upon this Court to review this judgment upon writ of error, 23 Statutes at Large, page 443.

The act of Congress last referred to gives this Court jurisdiction of any case decided by the Supreme Court of the District of Columbia, without regard to the amount involved "where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States." This language is taken from the twenty-fifth section of the Judiciary Act, but the qualification is not made that the decision be against the validity of the treaty, statute, or authority. The jurisdiction attaches whenever their validity is drawn in question.

Among the many cases in which this clause of the Judiciary Act has been construed the following seem to be pertinent to this case:

Lytle *vs.* State of Arkansas, 22 How., 193.
Maguire *vs.* Tyler, 1 Black, 192.
Hall *vs.* Jordon, 15 Wall., 393.
Buck *vs.* Colbath, 3 Wall., 334.
Neilson *vs.* Lagow, 7 How., 772.
Clayton *vs.* Utah, 132 U. S., 632.

In the case last cited, decided at the present term, the section of the statute under which this writ of error was taken is construed by the Court, and the right to the writ in such a case as this is fully sustained.

Merits of the Case.

The plaintiff's tenure of office was prescribed by the act of Congress which created the office. Practically it was during good behavior.

Sec. 341, Revised Statutes, relating to District of Columbia.

The same act authorized the Board of Police to make rules and regulations for the government and discipline of the police force. *Ib.*, Sec. 337.

Such rules and regulations were made, and constitute a part of the law of the District relating to the police force, binding as well upon the Board of Police which made them, and the Commissioners who succeeded to the powers and duties of the Board, as upon the members of the police force.

These rules and regulations, as well as the act of Congress (Sec. 355, R. S. D. C.), provide that no person shall be removed from the police force except upon written charges, and after an opportunity for the accused to be heard in his defence.

There is no act of Congress expressly repealing or modifying these provisions of the law. If repealed or modified in any respect, it is by implication.

The contention for the defendant is that, because the act of Congress of June 11, 1878, authorized the Commissioners to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to office, their right to remove persons from the police force was absolute, and in no wise subject to the conditions and regulations applicable to their predecessors, the Board of Police.

The act of Congress which transferred jurisdiction of the police from the Board of Police to the Commissioners declares that all the powers and duties exercised by the Board shall be transferred to the Commissioners.

The power of appointing to office, as well as removing from office, which was possessed by the old Board of Police, and which was transferred to the Commissioners, was subject to certain limitations and conditions provided by law. No person could be appointed to the police force who could

not read and write the English language, who had been convicted of crime, or who had not served in the Army or Navy, and been honorably discharged. No person could be removed from the force except upon written charges preferred against him and after an opportunity afforded him to be heard in his defence.

It is no less the power of removal or of appointment because thus limited. But the power must be exercised in the manner prescribed by law.

This Court said in Perkins *vs.* The United States, 116 U. S., 483. "The head of a department has no constitutional prerogative of appointment to offices independently of the legislation of Congress, and by such legislation he must be governed, not only in making the appointments, but in all things that is incident thereto."

The Act of 1878 giving the Commissioners the power of appointing to and removing from office is a re-enactment of the law of 1874. When the original act was passed in 1874 it could have had no application to the police force, because it was not then under the jurisdiction of the Commissioners. The Act of 1878, after defining the powers and duties of the Commissioners in the same language used in the Act of 1874, by a subsequent section, gave them also jurisdiction of the police of the District, and devolved upon them all the powers and duties in respect thereto which had theretofore been exercised by the Board of Police. It was additional power and jurisdiction to that given by the prior section of the act.

The latter section does not limit or modify the former, because it has relation to a different subject-matter. If Congress, after giving the Commissioners power to appoint persons to office and remove them from office by section 3 of the act, and after transferring to them jurisdiction over the police force had proceeded to re-enact the several sections of the law by which the Police Board were governed

(which sections are above quoted), there could then have been no possible chance for a question as to the legislative intent. What Congress did do was practically the same. It found in existence a police force of long standing, fully organized under laws enacted many years before. It found a separate and independent department of the District government controlled by a Board of Police appointed by the President, and possessing legislative functions delegated to it by Congress. It found a code of laws passed by that Board for the discipline and government of the police force. The only change attempted by the new legislation, so far as the police force is concerned, was to abolish the Board of Police and to devolve its powers and duties on the Commissioners. By doing this did Congress intend to repeal any part of the laws by which the Board of Police had been governed? It did not do so expressly. Did it by implication?

It is a familiar doctrine that repeal by implication is not favored by the Court. When there are two acts upon the same subject, the rule is to give effect to both.

Beals *vs.* Hale, 4 How., 37.
United States *vs.* Tynen, 11 Wall., 92.
McCartee *vs.* Orphan Asylum, 9 Cow., 437.
State *vs.* Palmer, 23 Florida, 620.
Robinson *vs.* Ripley, 111 Ind., 112.
Dugan *vs.* Gittings, 3 Gill., 138.
People *vs.* Gustin, 57 Mich., 407.

In Henderson's Tobacco Case, 11 Wallace, page 657, this Court, through Mr. Justice Strong, declares the law in this language: "Where the powers or directions, under several acts, are such as may well subsist together, an implication of repeal cannot be allowed."

The rule of law thus declared is referred to with approval by this Court in the following cases:

State *vs.* Stoll, 17 Wall., 431.
Murdock *vs.* Memphis, 20 Wall., 617.
Red Rock *vs.* Henry, 106 U. S., 601.
Puna *vs.* Bowler, 107 U. S., 538.
Fussell *vs.* Gregg, 113 U. S., 560.

In State *vs.* Stoll, the Court says:

"To justify this Court in holding that the act passed in that year repealed or modified the sixteenth section of the charter of the bank in question, it must appear that the later provision is *certainly and clearly* in hostility to the former. If, *by any reasonable construction*, the two statutes can stand together, they must so stand. If harmony is *impossible, and only in that event*, the former law is repealed, in part or wholly, as the case may be."

Mr. Justice Woods, who delivered the opinion of the Court in Red Rock *vs.* Henry, in which the question of repeal by implication was the only question involved, after reviewing the leading cases upon the subject, says:

"The result of the authorities cited is, that when an affirmative statute contains no expression of a purpose to repeal a prior law, it does not repeal it unless the two acts are in irreconcilable conflict, or unless the later statute covers the whole ground occupied by the earlier and is clearly intended as a substitute for it, and the intention of the legislature to repeal must be clear and manifest."

And the same Justice says, in stating the opinion of the Court in United States *vs.* Fisher, 109 U. S., page 145:

"Certain well-settled rules of interpretation are applicable to this case. One is, that a legislative act is to be interpreted according to the intention of the legislation apparent upon its face; Wilkinson *vs.* Leland, 2 Pet., 627. Another,

that if possible effect must be given to every clause, section and word of the statute; Bacon's Abr. Statute, I, 2; Powler's Case, 11 Coke, 29a, 34a; Potter's Dwarris, 194; Opinion of the Justices, 22 Pick., 571; and a third, that where two acts are in irreconcilable conflict, the later repeals the earlier act, even though there be no express repeal."

Now, there was no express repeal of sections 354 and 355 or any part thereof, but on the contrary it was expressly enacted by the law of 1878 that all laws then in force in the District of Columbia not inconsistent with that act should continue in force. So, if this act 1878 can be said to be an organic act, as stated by the justice who delivered the opinion of the General Term, it did not profess to be exclusive legislation, but was additional and cumulative. It did not go over the whole field of legislation by new enactment, but in a great measure prescribed the powers and duties of the Commissioners by reference to existing laws. The first section of that act, expressly continues in force "all laws relating to the District of Columbia not inconsistent with the provisions of this act." And section 12 of said act provides—

"That it shall be the duty of the said Commissioners to report to Congress at its next session succeeding their appointment a draft of such additional laws or amendments to existing laws as, in their opinion, are necessary for the harmonious working of the system hereby adopted, and for the effectual and proper government of the District of Columbia."

The act of 1878 contains no provision whatever in relation to the police, except abolishment of the Police Board, and the transfer of that department to the jurisdiction of the commissioners.

The "powers and directions" contained in the Act of 1861 (Sections 354 and 355, R. S., above quoted) and the Act of 1878, may well subsist together, and when read to-

gether as one act no clash or conflict is apparent between them: the powers and duties of one body, carefully and minutely defined, are devolved upon another body of the same general character possessing other and similar powers.

It ought not readily to be presumed that Congress intended to confer upon the Commissioners the arbitrary power of removing police officers without warning and without cause. It is contrary to the spirit of our laws and in conflict with the police system of all the large cities of the country.

The police laws and regulations of the city of New York are, and for many years have been, similar to those in force in this District. The Court of Appeals of that State in the case of The People *ex rel.* Hogan *vs.* Police Commissioners, on the 11th day of March, 1890, reversed an order of the Board of Police of that city removing a policeman on the ground that there was *no evidence* tending to prove the charges for which he was removed, and he was re-instated in pursuance of that judgment. The case has not been reported, but there are other reported cases in which that Court has decided similar questions showing that the construction placed upon the New York law is that it constitutes the police force a *quasi* military body, to be governed by fixed rules, the members of which are not subject to removal at the caprice or pleasure of any one.

People *ex rel* Matterson *vs.* The Police Commissioners, 110 N. Y., 494.

People *ex rel.* Swift *vs.* Police Commissioners, 99 N. Y., 676.

It may be noted here that it rests wholly with the Commissioners as to what shall constitute cause of removal, and they are the sole and final judges upon the hearing where there is any evidence to sustain the charge. Only two conditions are placed upon the power of removal, namely, that there must be charges and that the accused shall be heard before he is condemned.

Contemporaneous Construction.

The construction of a statute by those charged with the execution of it is entitled to great weight and should not be disregarded except for cogent reasons.

U. S. *vs.* Johnson, 124 U. S., 253.

Brown *vs.* United States, 113 U. S., 571.

The attention of the Court is, therefore, called to repeated constructions of this law not only by the Commissioners of the District and the Treasury Department but by Congress.

It is a well-known fact that the Commissioners have always understood that they were governed by the same restrictions in appointing police officers and removing them from office as the old Board of Police were. They have never appointed a police officer who has not served in the Army or Navy and been honorably discharged (except in one instance when expressly authorized by Congress to do so), although they have repeatedly complained of this restriction of law in their reports to Congress, and urged that the statute be amended in this regard. See annual report of the Commissioners of the District of Columbia for the year 1885 (Ex. Doc. No. 1, Part 2, First Session, 49th Cong., page 6) where it is said :

"The statute requiring policemen to be selected from those having an honorable discharge from the Army or Navy, no longer serves the purpose of its enactment, and as it is sometimes a bar to the selection of the man best qualified for duty, the Commissioners renew their former suggestion that this statutory rule be repealed."

This recommendation is again repeated in the report for 1886.

These reports of the Commissioners to Congress are required to be made by the 12th section of the Act of 1878,

hereinbefore quoted, and are public documents of which the court will take judicial notice.

They have never, except in the case of the plaintiff, and a few others, discharged at the same time, attempted to discharge a person from the police force without charges preferred and a trial.

After the decision of this case by the General Term, the Commissioners submitted the question of their power in the premises to the First Comptroller* of the Treasury, by whom the disbursements made by the District are audited, who replied under date of May 14, 1888, in which, after quoting the sections of the statute involved, he says:

"No question can be raised as to the power of these three Commissioners to act instead of the old Board of Metropolitan Police. If said act had said nothing further as to the powers of said Commissioners I think it will hardly be contended by any person that they had unlimited control in the appointment of the police force—that they could select whatever persons they saw proper, or could dismiss without cause. Standing simply in the attitude of the old Board as to the making of appointments, they must make their selections subject to the qualifications and restrictions which are plainly laid down in said sections 354 and 355.

"But it is suggested and contended that there are other powers vested in the District Commissioners, under which they are authorized to make said appointments and dismissals without restriction, which are found in section 3 of said act (of 1878) in the following words, to wit:

"'And said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office under them authorized by law.' By this provision the Commissioners were authorized to appoint and remove; but such provision fails to prescribe the qualifications of those whom they may appoint or causes for which officers may be removed. I do not infer from this that the Commissioners may make appointments

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*Hon. M. J. Durham.

without regard to qualifications, such as reading, writing, etc., or dismiss without cause. I do not regard this provision so repugnant to the said two sections that those sections are repealed by this later act.

"I beg to assure you of the high regard and esteem I have for the legal ability of the judges of the Supreme Court of the District of Columbia, as well as the honorable District Attorney, whose opinion you have enclosed to me, but I feel myself constrained to differ from them; and, adhering, as I do, to the well known and general rule of construction, to wit, that repeals by implication are not favored, and that to imply such repeal the later statute must be so repugnant to the former statute that they cannot stand together, I am forced to the conclusion that the act of 1878 does not operate as a repeal of the said sections 354 and 355."

In 1883 Congress, by a special act (22 Statutes at Large, 412), removed from office the six detectives who constituted part of the police force, and authorized the detailing of six privates of the police force for detective duty.

It also authorized the Commissioners to appoint six other policemen, without restricting these appointments to persons who had been honorably discharged from the Army or Navy.

The power to appoint to office and remove from office was conferred upon the Commissioners by the same section and clause of the Act of 1878, and both must be exercised subject to the limitations prescribed by law. Congress did not understand that the restrictions placed upon the power of appointment to and removal from the police force contained in sections 354 and 355 were removed by the Act of 1878, otherwise this Act of 1883 was wholly superfluous.

Several attempts have been made to secure legislation to remove or modify the restrictions placed upon the power of the Commissioners by sections 354 and 355. In the first

session of the 49th Congress a bill was introduced for this purpose (Senate Bill 374), which provided that said sections be amended so as to authorize the Commissioners "to appoint and remove at their discretion, persons as policemen and watchmen, other than those who have served in the Army or Navy of the United States." The Senate Committee on the District of Columbia reported a substitute, which was passed and approved January 26, 1887, by which no amendment of said sections 354 and 355 was made, the committee saying in their report that "This bill does not contemplate any change in the personnel of the police force."

The attention of the Court is also invited to a proviso attached to the appropriation bill, for payment of the police, passed February 28, 1885 (Statutes 1884–5, p. 316), which authorizes the District Commissioners to deduct one dollar each month from the pay of each policeman to be added to and form a part of the police fund, for the benefit of policemen who, by injury received or disease contracted in the line of duty, shall become disabled, etc. This is in harmony with the construction of the law as contended for on behalf of the plaintiff. It is inconsistent with the idea of a constantly shifting and ephemeral police force.

The Plaintiff Entitled to His Salary.

Congress having by law invested the old Board of Police with the power to appoint ten lieutenants of police for the District of Columbia, and the plaintiff having been appointed by that Board pursuant to the power thus given he became an officer, entitled to the pay and emoluments

of that office. The legal right to the office carries with it the right to the salary.

United States *vs.* Perkins, 116 U. S., 483.
United States *vs.* Addison, 6 Wall., 291.
Fitzsimmons *vs.* Brooklyn, 102 N. Y., 536.
Andrews *vs.* Portland, 79 Me., 484.
Memphis *vs.* Woodward, 12 Heisk., 499.
Dorsey *vs.* Smith, 28 Cal., 21.

It is respectfully submitted that the judgment of the General Term was erroneous and should be reversed and the judgment of the Circuit Court affirmed.

C. C. COLE,
W. L. COLE,
Attorneys for Plaintiff.

APPENDIX.

ADOLPHUS ECKLOFF
vs.
THE DISTRICT OF COLUMBIA. } Law. No. 24,748.

[Decided April 19, 1886.]

Mr. Justice JAMES delivered the opinion of the court:

The plaintiff recovered judgment in the circuit court for five hundred dollars, for salary as lieutenant of Metropolitan Police, for the months of April, May, June, July, and August, 1883, at one hundred dollars per month, and from that judgment the defendant has appealed.

It appears by the bill of exceptions that on the 31st of March, 1883, the Commissioners of the District of Columbia made an order to dismiss the plaintiff from service on the police force without trial or hearing on charges against him, and that the judge who tried the cause ruled that "the plaintiff could not, under the law, be suspended or discharged from service on the police force of the District of Columbia without trial or written charges and an opportunity to be heard in his defence." Whether the power of the Commissioners to remove from office was absolute, or was subject to this condition, is the question presented for our consideration. It is claimed on the part of the District that absolute power to remove officers of the Police force, equally with other officers under their control, was conferred upon the Commissioners by the act of June 11, 1878. The provisions of that act which relate to this sub-

ject are to be found in section 3 and section 6. Section 3 provides that the Commissioners are "authorized to abolish any office, to consolidate two or more offices, reduce the number of employees, remove from office, and make appointments to any office under them authorized by law;" and section 6 provides that "from and after the first day of July, eighteen hundred and seventy-eight, the Board of Metropolitan Police and the Board of School Trustees shall be abolished, and all the powers and duties now exercised by them shall be transferred to the said Commissioners of the District of Columbia, who shall have authority to employ such officers and agent and to adopt such provisions as may be necessary to carry into execution the powers and duties devolved upon them by this act." In order to determine the effect of these two provisions we have to recur to laws already existing at the time of the enactment of June 11, 1878, and to consider them together.

The act of August 6, 1861, by which the Metropolitan Police Force was established, is to be found in the Revised Statutes relating to the District of Columbia. Section 322 of the revision provided for "a board of five commissioners of police. Section 337 provided that "the board of police is authorized to pass, from time to time, rules and regulations for the proper government and discipline of its subordinate officers, and the duties of the police force shall be executed in accordance therewith."

Section 341 provided that "the officers of the police force shall be severally appointed by the board of police, and such person, so appointed, shall hold office only during such time as he shall faithfully observe and execute all the rules and regulations of the board, the laws of the United States, and the laws or ordinances exisiting within the District, and which apply to any part of the District where the members of that force may be on duty."

Section 342 provided that "the qualifications, enumeration and distribution of duties, mode of trial and removal

from office of each officer of the police force, shall be particularly defined and prescribed by rules and regulations of the board of police, in accordance with the Constitution and laws of the United States applicable thereto."

Section 355 provided that "no person shall be removed from the police force except upon written charges preferred against him to the board of police, and after an opportunity shall have been afforded him of being heard in his defence; and no person removed from the police force for cause shall be re-appointed to any office in said force."

It is claimed on the part of the District that the general and absolute power to "remove from office," which was afterwards conferred upon the Commissioners by the act of 1878, repealed by implication at least so much of section 355 of the Revised Statutes as forbade the removal of any person from the police force, except upon written charges preferred against him, and after an opportunity afforded him to be heard in his defence. On the part of the plaintiff it is claimed that the act of 1878, which gives the general power of removal from office, and the act of 1861 (the original of the sections quoted from the Revision), must both be made to operate, if possible, and that, when thus construed together, the later act means that the Commissioners shall have an absolute power to remove from office, without trial or hearing, all officers except those of the police force, and that, as to these, they shall have power to remove in the same manner as the Police Board (whose powers and duties are in terms transferred to them) had that power; namely, after a hearing upon written charges preferred.

It can hardly be said that there are any absolute *rules* for determining the question of implied repeal. The question in every case is, whether the intention of the later act, as ascertained by judicial construction upon all the grounds applicable to it, is to lay down a rule which puts aside the rule provided by the earlier act; and it is not reasonable, nor do we conceive it to be the law, that the intent of the later act

is always to be narrowed down, so as, *if possible*, to preserve the operation of the earlier act. In accordance with this view we think we are bound to consider the special nature and object of this kind of legislation, and whether these two statutes present a case which stands on the same plane with the statutes to which the doctrine of enforced co-operation has ordinarily been applied.

In order properly to determine the nature of the act of 1878, we must recall the previous legislation of Congress for the establishment of a government for this District. By the act of February 21, 1871, Congress provided a Governor, a Legislative Assembly with large powers, and certain boards charged with independent powers; leaving in existence certain boards which already possessed independent powers. When this system was found to be inconvenient, Congress established, in 1874, Commissioners in whom the greater part of the powers theretofore distributed were merged; still leaving in existence, however, the old School Board, with its powers, and the Police Board with its separate powers. Finally, in 1878, Congress passed a law intended, as we think, to establish a complete system of government for this District, concentrating in three Commissioners such powers and duties as had, until that time, been independent of them. This act, we conceive, is to be regarded as an organic act, intended to dispose of the whole question of a government for this District, and the powers bestowed by it upon the Commissioners are to be regarded as organic powers. In other words, we must address ourselves to the work of construing it much as we should to the construction of what are called constitutional powers. If this be the true nature of this statute, a general power, given to the possessors and executives of all the powers of government provided for the District, must be intended to be complete and comprehensive, and is not to be cut down by referring to antecedent statutes which had made special provisions for a part of the government of this District. When, for exam

ple, we find that the Commissioners are invested with power to *abolish* offices, to *consolidate* several offices, to reduce the number of employees, to *remove* from office, and to appoint to office, can we doubt that it was the intention of Congress to bestow what we have called an organic power over the subject of offices, especially when we find that this power includes legislative as well as executive functions? And can we doubt that as organic power. These powers of abolition, consolidation, removal and appointment must be intended to replace former systems? We conceive that this is the true character of the complete organization provided by the act of 1878 for the government of this District, and that, when so regarded, it must be held to do away the impediments which pre-existing acts on special subjects would place in the way of the organic power over the whole subject of offices. We hold, therefore, that, by a necessary implication, that provision of the act of 1861 which, with a view to the government of the police, and not to personal privilege and exemption, forbade the removal of any person from that office except on conditions, was repealed by the organic act of 1878 which gave to the Commissioners the general power of removal from office.

The judgment of the circuit court must therefore be reversed.

MAR 27 1890
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 244.

ECKLOFF *vs.* THE DISTRICT.

In Error to the Supreme Court of the District of Columbia.

BRIEF OF THE DISTRICT OF COLUMBIA.

The Power of the Commissioners of the District of Columbia to Remove Members of the Metropolitan Police Force.

GEO. C. HAZELTON,
Attorney for District of Columbia.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 244.

ECKLOFF *vs.* THE DISTRICT.

In Error to the Supreme Court of the District of Columbia.

BRIEF OF THE DISTRICT OF COLUMBIA.

This is a case in its far-reaching influence and consequences, of the utmost gravity.

THE PLAINTIFF CLAIMS, as a lieutenant of the Metropolitan police force, compensation at $100 per month, for five months, from and after April 1, 1883. He alleges that he was duly appointed and invested with said office; was never tried, found guilty, and removed, pursuant to section 355, Revised Statutes of the District of Columbia (p. 42); that on the first of April, 1883, he appeared at his usual office, ready for duty, and so continued from day to day during said month, but was never assigned to duty; that on pay-day he applied for his monthly compensation, which was refused. His suit was commenced September 15th, 1883.

THE DEFENDANT admits the appointment and holding of said office by the plaintiff; that written charges and trial

were not had under section 355, as claimed; that by paragraph 9 of section 3 (Dist. edition, 20 Stats., 102; Rch. Supp., 339) the Commissioners were authorized to remove the plaintiff, with or without trial, as in their judgment the public good might require; that acting on the written opinion of the Attorney General of the United States (see Appendix A), and information and advice of the superintendent of police, they did remove said Lieutenant Eckloff on the 31st day of March, 1883, and directed that his name be no longer borne on the pay-rolls of the District.

The defendant further contends that the plaintiff never tendered himself for duty, and in no event can he recover for more than the month of April.

The matters of proof as well as the propositions of law appear fully in the defendant's exceptions. (Rec., pp. 5–12, inclusive.)

ASSIGNMENT OF ERRORS.

The court erred in holding that the plaintiff was still a member of the Metropolitan police force of the District of Columbia;

In holding that under said third section of the act of June 11, 1878, the Commissioners of the District had not the power of amotion claimed for them in the premises;

In holding that the plaintiff could recover for more than one month.

POINTS MADE.

First.

It is for the plaintiff to establish that under existing law, he was at the time named in his suit, a lieutenant of the police force, entitled to pay.

He is confronted by the plain, explicit language of the ninth paragraph of section 3 of the act of June 11, 1878, above cited, as follows:

"Said Commissioners are hereby authorized to abolish any office, consolidate two or more offices, reduce the number of employees, *remove from office*, and make appointments to any office under them authorized by law."

It is a transcript of the language of the act of June 20, 1874, with the insertion of the words "under them."

A further provision of the act continuing this power, places the Metropolitan police under the jurisdiction and immediate personal control of the Commissioners. Their offices are created by law, and had Congress intended they should not, with all other officers, be subject to this wide and sweeping provision—its attention being called to the subject—it would have so said most assuredly.

The court below, in dealing with the case, seems to have followed an opinion of this office, on this very point, where conclusions were reached after much doubt and hesitation, and then by me regarded as, on the whole, the more satisfactory. (See Appendix B.) As a fairly considered paper of the law officer, it may be entitled to consideration. Its conclusion, I now think, may be gravely questioned.

The act confers the unqualified power of removal upon the Commissioners, and then by apt words brings the police force within its language. Why not within its intent also?

Section 6 declares that the Board of Metropolitan Police shall be abolished on the first day of July following, "and all the powers and duties now exercised by the same shall be transferred to said Commissioners of the District of Columbia, who shall have authority to employ such officers

and agents, and adopt such provisions, as may be necessary to carry into execution the powers and duties devolved on them by this act."

I.

It is contended in the opinion followed below, that this provision subrogated the new Commissioners, not only to the powers of the departing board, but exactly to their position toward the subject-matter, with the same limitations and restrictions upon them, which fettered the old Board of Police Commissioners.

This is, I submit, a fallacy, accepted by the court without question of its soundness.

First. The Commissioners have the same powers and duties, and, in addition, a grant of limitless power. "They shall have authority to employ such officers and agents *and to adopt such provisions as may be necessary* to carry into executions the powers and duties devolved upon them."

To adopt provisions is to make, create them, and all such, as may be necessary, *in their judgment*, without limit or restraint of any kind.

They may change the mode of trial on charges; may abolish trials if they deem that necessary, as they did in this instance.

What really are the governing controlling duties of the Commissioners in the premises?

The author of that opinion and the court below seem to have thought that it was first of all to be the duty of the Commissioners to see to it that the utmost care and caution, tenderness and forbearance, should be extended to the officers, *habeas corpus and trial by jury;* that really they were to be nursed;

have an easy secure thing for life; were soldiers retired on pensions. Instead, a police force must be an army of invasion, armed, alert, aggressive, under strictest discipline, to be promptly, vigorously, and summarily dealt with. A strong nervous hand must wield them, the lightest touch of which will send a thrill through the whole body of men.

War must be waged by warriors by war methods. I now contend that the entire scope of the broad and apt language last quoted, wholly lost sight of, was used for the purpose of placing the whole force within the discretionary power of the Commissioners. I have no doubt of it.

Second. This deals thus far with the sixth section as if it was the sole provision of the act bearing upon this grave matter.

We are to turn back to the creation of the Board of Commissioners.

The office of Commissioners was created by the act of June 20, 1874 (18 Stats., 116). The second section conferred on them all the power of the Governor and Board of Public Works of the District, as provided by the act of February 21, 1871 (chapter 1, Revised Statutes, District of Columbia). Paragraph 1, section 3d of the act of June 11, 1878, confers all this power on the present board. The review carries us at once to the ninth paragraph quoted above, that confers legislative power. To consolidate and abolish offices is a legislative power. The Governor did not have it. That was an addition, and makes broad—almost limitless—the grant of power, larger than any other American executive anywhere else exercises. Then comes the sixth section, placing the police under the control of the new executive, which the Governor did not have, and this new acquisition,

as we have seen, is made effective by the limitless power of adopting provisions the best calculated to secure the best service of the force, and not to secure the abiding in office by the minimum of work, that steers clear of conviction on trial.

II.

Another large fallacy of the opinion, as it now appears to me, is its curious and perhaps somewhat subtle method of construing the 6th and 3d sections of the act of June 11, 1878, so that they shall be governed by the 355 section of the Revised Statutes, District of Columbia, above cited. In other words—that is permitted to arrest the effect, entirely, of paragraph 9 of the 3d section, so far as the Metropolitan police are concerned.

The law enacted in 1878 is to be overridden by the act of 1861; that all statutes ever made on the same subject-matter are *pari materia*, and must be construed so that all can stand, even to the abrogation of all the later acts inconsistent with the first, unless the first are directly and by name repealed.

I am not now inclined to carry this doctrine so far.

The effort, is, to say that the power of amotion, conferred by the 9th paragraph, can be exercised of course, but it must be through the agency of a trial. This is almost a ridiculous evasion of the meaning of the provision. It is saying you may remove all officers whom you convict on trial. What becomes of those as to whom you fail? They make a part of the whole, and thereby become *immovable*. The power to try and punish is in no way a power to remove. Removal in case of conviction, is inciden-

tal. Beside, what will become of the fairness of a trial where the main purpose is to remove? How easy to arrange the triers. There can be no appeal, save to the Commissioners who appoint the triers. It is not for a moment to be supposed that triers would be packed for this purpose, but the method in theory, is a fair subject of criticism.

Three gentlemen worthy to govern the District certainly can and should be entrusted with this unqualified power, as I now believe they are, on a review of the subject.

III.

The plaintiff's position was supposed to be greatly strengthened by the passage of the act of January 31, 1883 (22 Stats., 412), the second section of which abolished the detective force of the police.

It was contended that this exercise of a power by Congress, claimed for the Commissioners, is a congressional declaration that for them, it does not exist. I was unable to see the force of this. I am now in the same state. It is saying that whenever a superior exercises a power claimed by a subordinate, such exercise is a declaration that his claim is without warrant.

Not at all. It is a legislative power. Congress was dealing with the general subject of the police. This thing was before it. It was more in the line of its duty. As the lawmakers it chose to do it and did, with no reference to the Commissioners. It may have thought them tardy; that it was an ungracious thing for them to do; that the effect of a blow from Congress would be more wholesome. They did it. It is for the court to say whether the claimed power of

amotion was ever vested in the Commissioners with which this thing has the least to do in the world.

The plaintiff had special control of the detectives; was within the spirit of the act abolishing them. The Commissioners, acting on the hint, wisely extended its letter to him.

The dangerous effect of the existence of this power in rendering office uncertain was dwelt on below. This can have no weight in the question of its existence. To now deny it, would be a real and great mischief, affecting hurtfully the discipline of the force. Recently, members of the force were, with counsel, before the Senate District Committee, urging a provision denying this power, trusting to keep within the safe line of doing no punishable act, and trusting to work one to old age, in a career of inefficiency and ease, while the admitted power of amotion would compel them to effective action, in their places.

Second.

Under my second assignment of error I merely note there never was a tender of service on the part of the plaintiff that would permit him to recover for even a month. He never reported for duty, never asked to be set to work, never set himself to work. Will mere *loafing* about his old office meet the requirements of the law?

He never did this after the first month. Is a man an eternal policeman, spite of duty and even presence? Is he an officer now? Must he not some time turn his attention to something else?

There was no implied presence or offer after April, nor a pretense of them.

His evidence halted far short. He should have shown what he was about; that he was doing nothing; else could get nothing to do. Not a word of this.

I care little about this branch of the case and rest nothing upon it, I seek an adjudication of the really very important principal question.

A. G. RIDDLE,
Attorney, District of Columbia.

NOTE.—This case is submitted on the foregoing brief prepared by my predecessor, Mr. A. G. Riddle.

GEORGE C. HAZELTON.

APPENDIX.

APPENDIX A.

DEPARTMENT OF JUSTICE,
WASHINGTON, *December* 30, 1882.

To the President.

SIR: Having transmitted to me the request of the District Commissioners for my opinion upon the question whether the Commissioners have power to remove without such trial as is contemplated by section 256 (R. S. of D. C.) members of the police force of the District, I answer as follows:

A brief outline of antecedent legislation may throw light on the subject.

For a long period prior to February 21, 1871, three municipal organizations, namely, the county of Washington and the cities of Washington and Georgetown, respectively, were invested with the ordinary functions of local government (the city of Washington being governed by a mayor, aldermen, and common council), but by act of that date (16 St., 419) the District of Columbia was created as a body corporate in place of these three organizations, with a new form of government, consisting of a Governor, Secretary, and Legislative Assembly. A Board of Public Works and Board of Health were also established as auxiliary organizations.

This scheme of government proved in some respects unsatisfactory to Congress, as is shown by report of its investigating committee, and by act of June 20, 1874 (18 St., 116), the plan of vesting the executive power in Commissioners was substituted as a temporary expedient (the Legislative Assembly being abolished), and a joint committee was authorized to prepare and submit a plan for a permanent form of government.

The committee reported its scheme, but Congress rejected it and other projects, and on July 11, 1878, passed the act under consideration, entitled "An act providing a permanent

form of government for the District of Columbia (20 St., 102), and this act has been continued to the present time without substantial modification.

Under the so-called old corporation of Washington city the power of appointment to local offices was vested in the mayor and aldermen, and that of removal in the discretion of the mayor. Under the plan of 1871 the appointment to and removal from offices created by the Legislative Assembly was vested in the Governor at his discretion, and this power, by the act of 1874 (section 2), Congress transferred to the Commissioners, authorizing their appointment, and proceeding as follows: "Who shall, until otherwise provided by law, exercise all the power and authority now lawfully vested in the Governor or Board of Public Works of said District, except as hereinafter limited."

But Congress saw fit to add the following plenary authority in a proviso to the section: "And said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employés, remove from office, and make appointments to any office authorized by law."

This provision was re-enacted in the act of 1878 (section 3) in identical terms, except that the words "under them" were inserted before the words "authorized by law."

It cannot be doubted that it was intended by the provisions cited to give the Commissioners power in their discretion to appoint to and remove from every office under their jurisdiction where a different mode of appointment or removal was not specified expressly or by legitimate inference. It is especially important to note this, since the general purpose or policy of Congress in such legislation, when once clearly apprehended, should have controlling effect in the construction of doubtful terms. They should be presumed, if possible, to have a meaning in harmony with such purpose rather than one opposed thereto.

Bearing this in mind we are prepared to state the question at issue, which is, in brief, whether by the sixth section of

the act of 1878 Congress, in bringing under the authority of the Commissioners an additional number of officers, namely, those of the police force, intended as to them to vary from its previously-established policy of confiding in those officers a discretionary power of appointment and removal. It may be fairly asserted that to maintain such an intent it ought to be shown by at least a very strong inference.

The language is that from a fixed date "the Board of Metropolitan Police and the Board of School Trustees shall be abolished, and that all the powers and duties now exercised by them shall be transferred to the said Commissioners of the District of Columbia, who shall have authority to employ such officers and agents and to adopt such provisions as may be necessary to carry into execution the powers and duties devolved upon them by this act." (20 St., 107.)

The powers and duties referred to will be found set forth in chapter 13 of the Revised Statutes of the District. The material point is that the power of removal then exercised by the police board was limited by the following provisions:

"Each person so appointed shall hold office only during such time as he shall faithfully observe and execute all the rules and regulations of the board, the laws of the United States, and the laws or ordinances existing within the District, and which apply to any part of the District where the members of the force may be on duty." (Sec. 341.)

"No person shall be removed from the police force except upon written charges preferred against him to the board of police and after an opportunity shall have been afforded him of being heard in his defense; and no person removed from the police force for cause shall be reappointed to any office in said force." (Sec. 355.)

If Congress in making this transfer had said that the powers and duties so transferred should be performed as theretofore by the police board, or in accordance with the provisions of existing laws, or had made use of some equivalent expression, it would have given such evidence of its

intent as, under the circumstances, might be expected if it intended to retain a mode of proceeding which was inconsistent with the plenary authority vested in the Commissioners since their creation.

By reference to the last clause of the section and that of the seventh section, it will be seen that when it intended to preserve a particular system from the effect of consolidation the expression is apt and clear.

But, aside from this, if Congress had made the transfer in the present terms, and had stopped with the words "District of Columbia," the question would still be whether express grant of power over all offices, which by its terms would clearly include the new offices, is to be limited by inference from the mere use of such words as "the powers and duties now exercised."

It would not be a strained construction of these words, under the circumstances, to interpret them in a general sense, and as not intended to incorporate details inconsistent with the existing plan.

The objection to this which may be suggested is that this would repeal by implication the provisions as to tenure and removal above cited, but this is met by observing that by section 15 all laws inconsistent with the provisions of the act are repealed. If found inconsistent, therefore, the repeal is express, and the practical difference is one which, it is submitted, is of weight in just such cases. Without such a clause the courts would feel bound to be even ingenious in preserving the said provisions; with it they are instructed that Congress expects that such inconsistent provisions will be found and directs their appeal. They are not obliged, therefore, to struggle against an apparent inconsistency, but may at once recognize it and give effect to the repealing section.

But it is not necessary to resort to such reasoning in view of the immediate context, which must of course be taken as defining the sense in which the preceding text is used. The words are "who (the Commissioners) shall have authority to

employ such officers and agents and to adopt such provisions as may be necessary to carry into execution the powers and duties devolved upon them by this act."

The plain intent of this clause, I submit, is to give the Commissioners plenary power to retain the existing police scheme, both as to its official and regulative features, or to modify or substitute without limit. So taken, it is in perfect harmony with the general purpose and policy before noted, and strengthens instead of impairing the power granted in section three.

It was perfectly competent, therefore, for the Commissioners, formally or tacitly, to adopt (or not) the provision for removal by trial on written charges, and to continue it so long as they should deem it necessary.

Extended argument to sustain this position is surely needless, unless it can be shown that the clause above mentioned is susceptible of some different and inconsistent interpretation. It cannot be presumed that Congress intended to bind the Commissioners by the words "powers and duties now exercised" to proceed by trial to remove a member of the police force when they substantially say in the same sentence to them, "You may use your discretion in the entire subject-matter."

It is not claimed that the question is without difficulty, but on the whole case it seems to me that Congress did not intend to force on the Commissioners (without apparent reason) the anomaly of a mode of removal as to one class of their appointees differing from that prescribed as to all others, but wisely left the matter to their own good judgment. I think, therefore, that the Commissioners are at liberty to adopt the method of removal at their discretion in the case under consideration.

I feel less hesitation in arriving at this conclusion from the fact that in a case which seems to me to be substantially analogous the general term of the supreme court of the District decided that a justice of the peace, who under sections 1030, 1031, R. S. of the District of Columbia, could be

removed only as therein prescribed, could be removed by the Commissioners in their discretion, when by subsequent legislation the appointment of justices was vested in the Governor (act Feb. 21, 1871), and that authority was by Congress transferred to the Commissioners, as before stated.

Bates *vs.* Dennison, 3 McArthur, 430.

A copy is inclosed.

I am, with respect,

BENJAMIN HARRIS BREWSTER,
Attorney General.

EDGAR H. BATES
vs.
WILLIAM DENNISON and JOHN H. KETCHAM. } At Law. 15486.

The Commissioners of the District of Columbia were invested with authority, under the second section of the act of June 20, 1874, to remove a justice of the peace from his office.

STATEMENT OF THE CASE AND DECISION.

The declaration in this case sets forth that the plaintiff was a justice of the peace in and for the District of Columbia, and that the defendants are Commissioners of said District, and, as such Commissioners, in connection with one Henry S. Blow, who has since deceased, did, on or about the 26th day of January, 1875, issue an order depriving the plaintiff of his commission as such justice of the peace, and that said act of the defendants was without authority or jurisdiction; in consequence whereof plaintiff has sustained damages to the extent of $10,000.

The defendants demurred to this declaration as being bad in substance, and gave notice that they would argue in support thereof that the defendants and said Blow, as Commissioners of said District, were invested with authority of law to remove the plaintiff from his said office.

The case was heard at general term in the first instance.

The second section of the act of June 20, 1874, organizing the Board of Commissioners, provides: "That nothing in this clause contained shall affect any provisions of law authorizing or requiring a deposit of certificates of assessment with the sinking fund commissioners of said District; and said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employés, *remove from office*, and make appointments to any office authorized by law."

The court were of opinion that the Commissioners of the District were vested by the plain reading of the statute with the power to remove the plaintiff. The power is not only vested in them, but the question of removal seems to be confided entirely to their judgment and discretion, and they are consequently not responsible for its exercise to the plaintiff.

There must be judgment for the defendants upon the demurrer.

R. Ross Perry,
For Plaintiff.
Edward L. Stanton,
For the Defendants.

Appendix B.

Office of the Attorney for the
District of Columbia,
Washington, *September 15th*, 1882.

Hon. Commissioners District of Columbia.

Gentlemen: The communication of the 11th inst. calling for an opinion find herewith.

What are the powers and discretions of the Commissioners to make removals of members of the police force? I am specially referred to paragraph 9, section 3 and section 15, of

the act of June 11, 1878. This last section merely gives effect to the implied repeals, if any, made by the act, and does not help, as I think, in ascertaining what these repeals are.

The ninth paragraph is a re-enactment of the same provision in the second section of the act of June 20, 1874, beginning in the last line of page 116, 18th Statutes at Large. That act repealed the act of February 21, 1871, abolished the government created by it, and vested the executive power, under certain limitations, in three Commissioners, declaredly a temporary expedient.

The language of this provision as it there stands is, "And said Commissioners are hereby authorized to abolish any office, to consolidate two or more offices, reduce the number of employés, remove from office, and make appointments to any office authorized by law."

These are specific and clear. Undoubtedly they were to be taken as limited to the District offices and employés placed under the Commissioners, and so this office held.

To consolidate and abolish offices created by law is the exercise of a legislative power. The power to appoint and remove is an ordinary executive power.

Are the words "remove from office" to be here taken to convey more than the ordinary power of removal under existing laws and regulations, if any such exist; or do they, by implication, repeal all legal restrictions upon that power, even to changing the conditions and tenure of office in a given case?

June 11, 1878, Congress, by act of that date, made the temporary government permanent. Satisfied with the exercise of the powers granted by the provision under discussion, it became a part of the third section. The only change is verbal—the insertion of the words "under them" after the word office in the last clause—the qualification which this office held, as already implied.

The provision now reads: "And said Commissioners are hereby authorized to abolish any office, to consolidate two or

more offices, reduce the number of employés, remove from office, and make appointments to any office under them authorized by law."

At the enactment of this law there were some independent governmental agencies, which it placed under the jurisdiction of the Commissioners.

The Metropolitan police, called the "police force," was one. (Sec. 6, p. 17, Dist. Ed., used by the Commissioners.) That force, since August 6, 1861, had been under the government of the Board of Police, now abolished. (Rev. Stats. D. C., chap. 13, p. 39, sec. 321, &c.; 12 Stats., 32.)

The transfer to the Commissioners is thus made: "That from and after the first day of July, 1878, the Board of Metropolitan Police shall be abolished, *and all the powers and duties now exercised by them* (it) *shall be transferred to the Commissioners of the District of Columbia*, who shall have authority to employ such officers and agents and adopt such provisions as may be necessary to carry into execution the powers and duties devolved upon them by this act."

This language exactly subrogates the Commissioners to the powers and duties of the Board of Police without enlargement or diminution. To these I will look and make reference to the rights of the members of the police force, as far as they throw light on the points under consideration, using the D. C. Rev. Stats. for reference:

"SEC. 341. The officers of the police force shall be severally appointed by the Board of Police, and each person so appointed shall hold office only during such time as he shall faithfully observe and execute all the rules and regulations of the board, the laws of the United States, and the laws or ordinances existing with the District, and which apply to any part of the District where the member of the force may be on duty.

"SEC. 343. The major of police shall take the place of the mayors of the cities of Washington and Georgetown as the head of the police department of those cities respectively, but always subject to the orders and regulations of the Board of Police.

"SEC. 338. It shall be the duty of the Board of Police at all times, when consistent with the rules and regulations of the board and with the requirements of this chapter, to furnish all information desired, and comply with all requests made by the Legislative Assembly or by the Governor."

Section 437 authorizes a collation of the laws and ordinances in force for general use.

Section 438, the police code, prepared in accordance with the preceding section and such rules as the Board of Police may from time to time adopt for the purpose of enforcing and carrying out the provisions thereof, shall constitute the law of the District upon the matters therein contained.

The only method of removal provided and the sole power of amotion of a member of the force, resides in section 355, as follows:

"No person shall be removed from the police force except upon written charges preferred against him to the Board of Police, and after an opportunity shall have been afforded him of being heard in his defense; and no person removed from the police force for cause shall be reappointed to any office in said force."

The prepared code prescribes the mode of procedure and has the force of law.

It is thus seen that Congress guarded with care the tenure of the policeman's office, with full protection of his rights and ample safeguards against removal, so long as he was faithful, and the sole power of amotion lay through charges and a fair trial. This was the policy and law of Congress for nearly twenty years.

Did Congress intend to totally change this policy and law by the words "and said Commissioners are hereby authorized to remove from any office under them?" Is the presumption so strong that Congress did so intend that section 355 must be held to be repealed by implication? Or did Congress mean exactly what it said later in the same act, that the Commissioners should, as to the police force, take

and exercise the same powers and duties with which the Board of Police was invested, among which is the duty to receive written charges, give notice and fairly try a policeman, and dismiss him only when found guilty? These provisions must both stand if possible. If necessary the sixth section should be held to qualify the ninth paragraph.

If the offices of the third paragraph are the offices held by the police under the Revised Statutes the laws are *pari materia* and these should be construed so as to stand together. Is there any violence in saying that the Commissioners may remove from office, but the members of the police force shall only be removed on charges, notice, and trial?

Courts are adverse to holding a law to be repealed by implication; a case of unqualified antagonism should exist.

A greater difficulty in the way of holding the police force to be within the ninth paragraph, unqualifiedly, is found, as I think, in section 341, quoted above.

The members of the police force, officers and privates, are there assured of their offices so long as they shall faithfully observe and execute all the rules and regulations of the board, the laws of the United States, and the laws and ordinances existing within the District.

Can a policeman have too many honorable inducements to a faithful discharge of duty?

I construe the language of the ninth paragraph, section 3d, as not controlling the language of the sixth section, defining the power and duty of the Commissioners, as also not repealing the 355 section, Rev. Stats., and not changing the tenure and conditions of office of the whole police force. Congress created the offices or places of the police force. I have no doubt it can change the tenure and conditions of the office at pleasure while held. (10th Howard, 402; *Butler et al.* vs. *Penn*, Cooley's Constitutional Limitations, p. 276, and note.) Cases are many. There can be no doubt of it, on principle as well as authority. What I do doubt very greatly is that Congress intended to confer on the Commissioners power, at discretion, to change the tenure, repeal not

only the 355th section, but the 341st and 438th. There is much force in the view that places the police force unqualifiedly within the scope of the ninth paragraph, free from the conditions of chapter 13, Rev. Stats., but, after mature consideration, I am unable to adopt it.*

In my opinion the Commissioners of the District have the same, and no further or other, power over the police force than had the Board of Police Commissioners. They can remove them only as there provided.

Very respectfully,

A. G. RIDDLE,
Att'y for D. C.

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*NOTE.—When this matter was before me at the above date, on my first examination I came to my present conclusion. The consequences seemed then so grave that I reviewed the questions with great care and the result was the above.

MARCH 3d. A. G. R.